

## **REMARKS**

### **Status of the Claims**

The Office Action dated April 27, 2009 has been received and reviewed by the Applicant. Claims 1-8 are pending in the application. Claims 1-8 stand finally rejected. By this Paper, it has been proposed that Claims 1, 2, and 6 be amended. In view of the proposed amendments and the following remarks, it is respectfully considered that Claims 1-8 are now allowable.

### **Rejection of the Claims under 35 U.S.C. § 112**

Claims 6-8 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner points out that there is insufficient antecedent basis in Claim 6 for the limitation “the drivable at least one stacking member” in line 4; and in Claim 7, the Examiner contends that “rubber-like” renders the claim indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by “-like”). It has been herein proposed to amend Claim 6 to change the objectionable term to “the drivable at least one stacking device”, and to amend the paragraph beginning on Page 3, line 12, of the Specification to more particularly define the term “rubber-like” to provide adequate disclosure of the subject matter being claimed. It is respectfully submitted that when amended as proposed, this rejection is no longer proper and should be removed.

### **Rejection of the Claims under 35 U.S.C. § 102(b) and § 103(a)**

Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Holtje (US 5,692,740), and Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Holtje (US 5,692,740) in view of Dobrindt (US 2004/0256797 A1). Holtje discloses at least one stacking device (12) that rotates about an axis of rotation (14) comprises at least one tongue-shaped drag element (28a) that is on a radial exterior side of at least one stacking member (16a), at least one input means (18a), and a stack abutment(40). As previously discussed, the drag element, corresponding to Applicant’s claimed drag element,

is actually element 19a of the reference (not element 28a as suggested by the Examiner). Such drag element (19a) is located at the radial interior side of the at least one stacking device, not the radial exterior side as now particularly recited in the claims. As such the drag element acts against a fixed element 28(a). This radial exterior positioning of Applicant's drag element is an important aspect of Applicant's invention in that it enables accommodation of varying height differences at the sheet stack; that is, by arranging Applicant's drag element on the exterior side of the stacking member, the falling height of the sheet can be bridged in a targeted and precise manner in order to achieve a reliable alignment of the last deposited sheet. Accordingly, the rejection under 35 U.S.C. §102 is respectfully considered to be improper and should now be withdrawn. Claim 8 is dependent indirectly upon Claim 1 and as such includes all the limitations thereof. As noted, the Holtje reference fails to anticipate Applicant's invention, and the addition of the Dobrindt reference only shows metal reinforcement, and does not provide a teaching overcoming the missing element of the Holtje reference. Therefore, when amended as proposed, it is respectfully submitted that Applicant's invention as recited in Claims 1-8 patentably distinguishes over the prior art, and such claims should be allowed.

### **CONCLUSION**


Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. §1.99.

It is respectfully submitted that, in view of the above proposed amendments and remarks, this Application is now in condition for allowance, prompt notice of which is earnestly solicited. If the Examiner deems the Application to not be in condition for allowance, it is respectfully requested that this Amendment be entered as placing the Application in better form for Appeal.

The Examiner is invited to call the undersigned in the event that a phone interview will expedite prosecution of this application towards allowance.

The Commissioner is hereby authorized to charge any fees in connection with this communication to Eastman Kodak Company, Deposit Account No. 05-0225.

Respectfully submitted,

  
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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.